Design Nucleus Association Sdn Bhd v Low Yat & Sons Realty Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R2-12-178 OF 1998
AZMEL J
15 SEPTEMBER 2001

Civil Procedure *— Appeal — Appeal from sessions court — Notice of appeal — Failure to state whether appealing against whole or part of decision — Whether requirement mandatory — No satisfactory explanation for failure — Whether appeal proper — Subordinate Courts Rules 1980 O 49 r 2(2)*

The defendant appealed against the decision of the learned sessions court judge dated 24 April 1998, allowing the plaintiff's application under O 26A of the Subordinate Courts Rules 1980 ('the SCR') demanding the defendant to pay the plaintiff a sum of RM41,939 with interest at the rate of 8%pa with effect from 15 April 1995 till the date of realization, plus costs. The defendant filed its notice of appeal on 14 May 1998. The notice filed by the appellant/defendant did not indicate whether the appellant/defendant was appealing against the whole of the decision or in part as required by O 49 r 2(2) of the SCR.

Held, striking off the appeal:

From the wordings of O 49 r 2(2) of the SCR, it is mandatory for the appellant to state in the notice of appeal whether it was appealing against the whole or part only of the decision. The appellant in this case had failed to comply with the said provision. However, if a satisfactory explaination could be given in respect of the non-compliance then the court could exercise its inherent discretion to waive such requirement. In this case, no such satisfactory explaination was given by the counsel for the appellant. In the light of such circumstances, the appellant's appeal was improper for want of compliance of the provision of O 49 r 2(2) of the SCR (see p 144B–C).

[Bahasa Malaysia summary

Defendan telah merayu terhadap keputusan hakim mahkamah sesyen yang bertarikh 24 April 1998, membenarkan permohonan plaintif di bawah A 26A Keadah-Keadah Mahkamah Rendah 1980 ('KMR'), menuntut daripada defendan untuk membayar plaintif jumlah sebanyak RM41,939 dengan faedah pada kadar 8% setahun bermula pada 15 April 1995 sehingga tarikh penyelesaian, dengan kos. Defendan telah memfailkan notis rayuannya pada 14 Mei 1998. Notis yang difailkan oleh perayu/defendan tidak menyatakan sama ada perayu/defendan merayu terhadap keseluruhan keputusan atau sebahagiannya seperti yang diperuntukkan di dalam A 49 k 2(2) KMR.

Diputuskan, menolak rayuan tersebut:

Menurut A 49 k 2(2) KMR, adalah mandatori untuk perayu menyatakan di dalam notis rayuan tersebut sama ada beliau merayu terhadap keseluruhan keputusan tersebut ataupun sebahagian daripadanya. Perayu di dalam kes ini gagal mematuhi peruntukan tersebut. Walau bagaimanapun, jikalau penjelasan yang munasabah boleh diberi berkenaan dengan ketidakpatuhan peruntukan tersebut, mahkamah boleh menggunakan budi bicaranya untuk mengetepikan keperluan tersebut. Di dalam kes ini, tiada penjelasan yang munasabah diberikan oleh peguam perayu. Oleh yang demikian, rayuan perayu tidak betul kerana tidak mematuhi peruntukan A 49 k 2(2) KMR (lihat ms 144B–C).

Notes

For cases on appeal from sessions court, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 590–591.

Legislation referred to

Subordinate Courts Rules 1980 O 26A, O 49 r 2(2)

Appeal from: Summons No 52–3398 of 1996 (Sessions Court, Kuala Lumpur)

Anita Shoba (*Shahrum Shah Chin & Mahathir*) for the appellant/defendant.

MY Leong (*Choong & Co*) for the respondent/plaintiff.

Azmel J: This is an appeal by the defendant against the decision of the learned session court judge dated 24 April 1998 allowing the plaintiff's application under O 26A of the Subordinate Courts Rules 1980 ('the SCR') asking the defendant to pay the plaintiff a sum of RM41,939 with interest at the rate of 8%pa with effect from 15 April 1995 till the date of realisation plus costs.

On 14 May 1998, the defendant filed its notice of appeal. The said notice of appeal reads:

> AMBIL PERHATIAN bahawa perayu/defendan yang dinamakan di atas setelah tidak puas hati dengan keputusan Tuan Zainol Rashid Hussain, Hakim Mahkamah Sesyen di Kuala Lumpur yang diberikan pada 24 April 1998 merayu kepada Mahkamah Tinggi *terhadap keputusan tersebut* yang membenarkan penghakiman dicatatkan di bawah A 26A k 1 dalam Kaedah-Kaedah Mahkamah Rendah 1980 terhadap rayuan perayu/defendan untuk jumlah RM41,939. (Emphasis added.)

This appeal came for hearing before me on 15 June 1998. At the commencement of the hearing, I enquired from the counsel for the appellant as to why the notice of appeal filed by the defendant/appellant did not indicate in it whether the defendant was appealing against the whole of

the decision or in part as required under O 49 r 2(2) of the SCR which reads:

> An appellant may appeal from the whole or any part of a decision and *the notice of appeal shall state whether the whole or part only and what part of the decision is* complained of. (Emphasis added).

No proper and reasonable explaination was furnished by the counsel for the appellant. I am of the view that from the wordings of O 49 r 2(2) of the SCR it is mandatory for the appellant to state in the notice of appeal whether it was appealing against the whole or part only of the decision. The appellant in this case had failed to comply with the said provision. However, if a satisfactory explaination could be given in respect of the non-compliance then the court could exercise its inherent discretion to waive such requirement. In this case, no such satisfactory explaination was given by the counsel for the appellant. In the light of such circumstances, the appellant's appeal before me was improper for want of compliance of the provision of O 49 r 2(2) of the SCR. As such, I struck off the appeal.

Appeal struck off.

Reported by Chew Phye Ken